



**Billing Code 4310–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R6–ES–2016–N171; FXES11150600000–167–FF06E13000]**

**Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Draft Candidate Conservation Agreement with Assurances for Eight Species in Northeastern Wyoming and Southeastern Montana, with Integrated Candidate Conservation Agreement and Conservation Agreement; Draft Environmental Assessment**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), received an application from the Thunder Basin Grasslands Prairie Ecosystem Association (Thunder Basin Association) for an Enhancement of Survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA), associated with implementation of a Candidate Conservation Agreement with Assurances (CCAA) for eight species (Covered Species) in

specified areas in northeastern Wyoming and southeastern Montana (Coverage Area). The CCAA would implement a Conservation Strategy developed by the Thunder Basin Association for farm and ranch operations, certain recreational activities, oil and gas activities, and surface/in-situ mining activities on enrolled non-Federal lands in the Coverage Area. The Association also proposes that the Conservation Strategy be implemented on Federal lands administered by the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) in the Coverage Area through two additional agreements, a Candidate Conservation Agreement (CCA) and Conservation Agreement (CA), that would also be administered by the Association. The intent of the CCAA and associated CCA and CA is to provide non-Federal landowners and BLM and USFS permittees/lessees in the Coverage Area with the opportunity to voluntarily conserve the Covered Species and their habitats on enrolled properties while carrying out their operations in a manner that would contribute to precluding the need to list any of these species.

Pursuant to the National Environmental Policy Act (NEPA), we have prepared a draft environmental assessment (EA) that analyzes the potential impacts of issuance of the permit and implementation of the proposed CCAA, as well as the potential impacts of other Federal entities entering into the companion CCA and CA. The draft EA also analyzes the potential impacts of two alternatives to the consolidated proposed action, including a no action alternative. The permit application, the draft CCAA and draft EA are available for public review, and we seek public comment on these documents and potential issuance of the permit associated with the CCAA. Because the draft CCA and

CA are part of the proposed action addressed in the draft EA, we have also made these draft agreements available for public review.

**DATES:** Written comments must be submitted by **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Thunder Basin CCAA.

- *Internet:* Documents may be viewed on the Internet at <http://www.fws.gov/wyominges/Index.html>.
- *U.S. Mail:* Field Supervisor, Wyoming Ecological Services Field Office, U.S. Fish and Wildlife Service, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009.
- *Email:* ThunderBasin\_CS@fws.gov. Include “Thunder Basin CCAA” in the subject line of the message.
- *Fax:* 307-772-2358, Attn: TBGPEA CCAA.
- *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Wyoming Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Wyoming

Ecological Services Field Office (see **ADDRESSES**), telephone: 307-772-2374. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We received an application from the Thunder Basin Grasslands Prairie Ecosystem Association (Thunder Basin Association or Association) for an enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; ESA), for incidental take associated with implementation of a proposed eight-species Candidate Conservation Agreement with Assurances (CCAA). The Coverage Area would be the five northeastern Wyoming counties of Campbell, Converse, Crook, Niobrara, and Weston, along with two qualifying peripheral properties in Sheridan County, Wyoming, and in the Montana counties of Big Horn, Powder River, and Rosebud. The activities covered by the draft CCAA and permit (Covered Activities) are general farm and ranch operations, certain recreational activities, oil and gas activities, and surface/in-situ mining activities, as well as the conservation measures to be implemented for these activities under the CCAA. The application includes a draft CCAA that addresses impacts to the Covered Species from Covered Activities on eligible non-Federal properties within the Coverage Area. These impacts are addressed through a Conservation Strategy developed by the Association for implementation through three separate but related agreements to be administered by the Association: the CCAA, which encompasses non-Federal lands in the Coverage Area, a Candidate Conservation Agreement (CCA) that addresses Covered

Activities conducted on BLM or USFS lands in the Coverage Area pursuant to a permit, license, or other authorization from these agencies; and a Conservation Agreement (CA) that addresses voluntary conservation measures undertaken by eligible companies in anticipation of their future development of energy resources within specified potential coal and oil and gas development areas within the Coverage Area. Activities covered by the CCA and the CA would not be covered by the Enhancement of Survival permit and associated CCAA that are the subject of this notice, and no assurances or permits under the ESA are available for these separate agreements.

The Conservation Strategy developed by the Thunder Basin Association proposes to address landscape conservation in the Covered Area in the context of two primary ecotypes, sagebrush steppe and the shortgrass prairie, and their associated at-risk Covered Species. The Covered Species found in the sagebrush steppe ecotype are greater sage-grouse (*Centrocercus urophasianus*), sage sparrow (*Amphispiza belli*), Brewer's sparrow (*Spizella breweri*), and sage thrasher (*Oreoscoptes montanus*). The Covered Species found in the shortgrass prairie ecotype are black-tailed prairie dog (*Cynomys ludovicianus*), mountain plover (*Charadrius montanus*), burrowing owl (*Athene cunicularia*), and ferruginous hawk (*Buteo regalis*). The intent of the Association's Conservation Strategy, as implemented through the CCAA and companion agreements, is to provide ranchers, agriculture producers, coal producers, and an oil and gas producers in the Coverage Area with the opportunity to voluntarily conserve the Covered Species and their habitat while carrying out their operations in a manner that would contribute to precluding the need to list these species.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*; NEPA), we have prepared a draft environmental assessment (EA) that analyzes the potential impacts of issuance of the permit and implementation of the proposed CCAA, as well as the potential impacts of the Service and other Federal entities entering into the companion CCA and CA. The draft EA also analyzes the potential impacts of two alternatives to the consolidated proposed action, including a no action alternative. The permit application, the draft CCAA and draft EA are available for public review, and we seek public comment on these documents and potential issuance of the permit associated with the CCAA. Because the draft CCA and CA are part of the proposed action addressed in the draft EA, these draft agreements are available for public review.

### **Background Information**

A CCAA is an agreement between the Service and one or more non-Federal entities in which private and other non-Federal landowners voluntarily agree to manage lands they enroll in the CCAA to remove or reduce threats to species that are proposed for listing under the ESA, that are candidates for listing, or that may become candidates for listing. In return for managing their lands to the benefit of the species covered by the CCAA, participating property owners receive assurances that no additional conservation measures or land, water or resource use restrictions will be imposed under the ESA on covered activities on enrolled lands should any of the covered species ever be listed under the ESA. The Service provides these assurances through an Enhancement of Survival permit, issued pursuant to section 10(a)(1)(A) of the ESA for a specific number of years, that becomes effective if a species covered by the CCAA and permit is listed. Under the

permit, participating landowners also receive authorization for take that is incidental to activities covered by the CCAA. In a case such as this, in which a third-party would administer the CCAA, the permit is issued to the third-party administrator, the Thunder Basin Association here, and permit coverage extends to non-Federal landowners who enroll in the CCAA through a Certificate of Inclusion (CI) and comply with the requirements stated in the CCAA and their respective CIs. Additional permit application requirements and issuance criteria for CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively, as well as 50 CFR part 13. Please also see our joint policy on CCAAs, which we published in the Federal Register with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

As described above, the Thunder Basin Association has also proposed implementing its Conservation Strategy in the Coverage Area through two additional agreements, the CCA and CA, which are integrated with the CCAA and the Association's administration of that agreement. In general, CCAs and CAs are voluntary conservation agreements between the Service and one or more public or private parties that identify specific conservation measures that the participants will voluntarily undertake to conserve the species covered by the agreements. CCAs are typically developed with Federal agencies to address one or more threats on Federal lands to candidate species and species that are likely to become candidates, and are particularly helpful in ensuring consistent application of a conservation strategy in situations, such as occur in the Coverage Area, where private activities occur on a mix of non-Federal and Federal lands. Because Federal agencies have special obligations for the conservation of listed species under

section 7 of the ESA, CCAs for activities conducted on Federal lands do not include the assurances, incidental take authorization and permit that are available to participants in a CCAA, all of whom by definition are non-Federal entities. A CA, in turn, may involve non-Federal and/or private parties, but also does not provide assurances, take authorization or a permit to agreement participants. In both types of agreements, the Service works with its partners to identify threats to candidate species, plan the measures needed to address the threats and conserve these species, identify Federal permittees/licensees or others willing to participate in the CCA or CA, develop agreements with these parties, and design and implement conservation measures and monitor their effectiveness.

### **Proposed Action**

Under the proposed CCAA and the incorporated Conservation Strategy, members of the Thunder Basin Association who enroll non-Federal lands in the CCAA (Participants) would implement conservation measures that avoid, minimize, and mitigate impacts to the Covered Species and their habitats from activities covered by the CCAA (Covered Activities), which are general farm and ranch operations, certain recreational activities, oil and gas activities and surface/in-situ mining activities, as well as the conservation measures to be implemented for these activities under the CCAA. The Service would issue the permit to the Thunder Basin Association, which would administer the CCAA and enroll the Participants as provided in the CCAA. The CCAA and associated permit would be in effect for 30 years. The Coverage Area would encompass the five northeastern Wyoming counties of Campbell, Converse, Crook,



Niobrara, and Weston, along with two qualifying peripheral properties located in Sheridan County, Wyoming, and the Montana counties of Big Horn, Powder River, and Rosebud.

Through issuance of the enhancement of survival permit to the Thunder Basin Association, the Service would provide landowners who enroll non-Federal property in the CCAA through the Association with assurances that, should any of the Covered Species be listed, no further commitments or restrictions than those they committed to under the CCAA would be imposed for Covered Activities on enrolled lands, as long as the CCAA is being properly implemented. Furthermore, if any of the Covered Species are listed, the permit would provide landowners participating in the CCAA with incidental take authorization for Covered Activities on enrolled non-Federal property. The permit would become effective on the effective date of a listing of a Covered Species as endangered or threatened and would continue through the end of the CCAA term.

The Secretary of the Interior has delegated to the Service the authority to approve or deny a section 10(a)(1)(A) permit in accordance with the ESA. To act on Thunder Basin Association's permit application, we must determine that the CCAA meets the issuance criteria specified in the ESA and at 50 CFR 17.22 and 17.32, as well as at 50 CFR part 13. These criteria include a finding that the proposed CCAA complies with the requirements of our CCAA Policy (64 FR 32726; June 17, 1999). The Service has proposed changes to the CCAA Policy and Regulation (FWS/NOAA Fisheries policy notice at Docket No. [FWS-HQ-ES-2015-0177; May 4, 2016]; FWS regulations notice at

Docket No. [FWS-HQ-ES-2015-0171; May 4, 2016]. When determining whether this CCAA complies with the requirements of our CCAA Policy, we will use the most recent finalized CCAA Policy.

### **National Environmental Policy Act Compliance**

The issuance of a section 10(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508; 516 DM 6.2B). The Service’s decision on whether to enter into the CCAA, CCA and CA, so that the Conservation Strategy can be implemented on non-Federal and Federal lands subject to these agreements, is also a Federal action subject to NEPA compliance. The Association’s draft CCAA and related application for the Enhancement of Survival permit , as well as the companion CCA and CA it proposes, are not eligible for categorical exclusion under NEPA. We have prepared a draft EA to further analyze the direct, indirect, and cumulative impacts of the proposed CCAA and permit, the CCA and the CA, including their proposed implementation of the Conservation Strategy, on the quality of the human environment and other natural resources. In compliance with NEPA, we analyzed the potential impacts of this proposed action and a reasonable range of alternatives in the draft EA. Based on these analyses and any new information resulting from public comment on the proposed action, we will determine if issuance of the permit and approval of the underlying CCAA and related CCA and CA would cause any significant impacts to the human environment. After reviewing public comments, we will evaluate whether the proposed action and alternatives in the draft EA are adequate to

support a finding of no significant impact under NEPA. We now make the draft EA available for public inspection online or in person at the Service offices listed in **ADDRESSES**.

### **Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, information, opinions, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed permit action. We particularly seek comments on the following: (1) Biological information and relevant data concerning the Covered Species; (2) current or planned activities in the subject area and their possible impacts on the Covered Species; (3) identification of any other environmental issues that should be considered with regard to the proposed permit action; and (4) information regarding the adequacy of the draft CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

### **Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comments, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive,

as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Wyoming Field Office (see **ADDRESSES**).

### **Next Steps**

After completion of the EA based on consideration of public comments, we will determine whether adoption of the proposed action, entry into the proposed CCAA, CCA and CA and issuance of the permit associated with the CCAA, warrants a finding of no significant impact or whether an environmental impact statement should be prepared. We will evaluate the proposed agreements and their incorporated Conservation Strategy, as well as any comments we receive, to determine whether to enter into the agreements. We will also use our evaluation and any comments we receive to help determine whether implementation of the proposed CCAA would meet the requirements for issuance of a permit under section 10(a)(1)(A) of the ESA. Further, we will evaluate whether the proposed permit action and underlying CCAA, in addition to the CCA and CCA, would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit to the Thunder Basin Association and enter into a CCAA, CCA, and CA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

**Authority**

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6; 516 DM 6.2B, respectively).

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[FR Doc. 2016-28418 Filed: 11/25/2016 8:45 am; Publication Date: 11/28/2016]